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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,201	09/29/2003	Richard F. Gladney	SMCY-P01-081	9948
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ROPES & GRAY LLP EDWARD J. KELLY ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624				
EXAMINER SAFAVI, MICHAEL				
ART UNIT PAPER NUMBER				
3637				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/675,201

**Applicant(s)**

GLADNEY, RICHARD F.

**Examiner**

MICHAEL SAFARI

**Art Unit**

3637

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6, 9, 20, 21 and 52-64 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21 and 60-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 9 and 52-59 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/05/07 & 7/08/09 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 08, 2009 has been entered.

### ***Drawings***

The replacement drawing sheets received on December 05, 2007 and the new sheet of drawing received on July 08, 2009 are acceptable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 6, 9, 52-54, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Husler 6,263,528.** Husler discloses, Figs. 2 and 3, a mattress having a

substantially rectangular sleeping surface; and a pivoting member 51 attached to an exterior portion of a major surface of said mattress and configured as a tubular sleeve extending outwardly from the major surface, with said pivoting member adapted to receive an attachment bar, (with 5 removed allows for placement of any type rod or beam or 5 is an attachment bar), for attachment to an adjustable bed frame wherein the mattress is configured to pivot about an axis parallel to the pivoting member 51. The pivoting member is releasably attached to the mattress, (**claim 52**) as by a hook-and-loop fastener, col. 3, lines 44-45 and 55-58, (**claim 53**). The mattress has a uniform thickness, (**claim 54**). The pivoting member comprises a plurality of tubular sleeves arranged between two side surfaces of the mattress, (**claim 57**).

**Claims 1, 6, 9, 52, 54, and 57-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Schutz 3,659,297.** Schutz discloses, Figs. 2-5, a mattress 15 having a substantially rectangular sleeping surface; and a pivoting member 34, 35, 42 attached to an exterior portion of a major surface of said mattress and configured as a tubular sleeve extending outwardly from the major surface, with said pivoting member adapted to receive an attachment bar for attachment to an adjustable bed frame wherein the mattress is configured to pivot about an axis parallel to the pivoting member 34, 35, 42. The pivoting member is releasably attached to the mattress as at 37, 38, 43, (**claim 52**). The mattress has a uniform thickness, (**claim 54**). The pivoting member comprises a plurality of tubular sleeves arranged between two side surfaces of the mattress, (**claim 57**). The mattress is a two- sided mattress having two major substantially rectangular

surfaces, each adapted to form a sleeping surface; and pivoting members configured as a tubular sleeve and attached to each of the major surfaces of said mattress, said pivoting members adapted to receive an attachment bar for attachment to an adjustable bed frame, (**claim 58**). The mattress is reversible, (**claim 59**).

**Claims 1, 6, 9, 54, and 57-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Rude 540,112.** Rude discloses, Fig. 1, a mattress, as shown in Fig. 1, having a substantially rectangular sleeping surface; and a pivoting member, (fabric loops or grommets that extend from either surface as can be seen in Fig. 1, e.g., just below 'A' in upper left corner or just above 'A'<sup>2</sup> in lower right corner, etc.), attached to an exterior portion of a major surface of said mattress and configured as a tubular sleeve extending outwardly from the major surface, with said pivoting member adapted to receive an attachment bar for attachment to an adjustable bed frame wherein the mattress is configured to pivot about an axis parallel to the pivoting member. The mattress has a uniform thickness, (**claim 54**). The pivoting member comprises a plurality of tubular sleeves arranged between two side surfaces of the mattress, (**claim 57**). The mattress is a two- sided mattress having two major substantially rectangular surfaces, each adapted to form a sleeping surface; and pivoting members configured as a tubular sleeve and attached to each of the major surfaces of said mattress, said pivoting members adapted to receive an attachment bar for attachment to an adjustable bed frame, (**claim 58**). The mattress is reversible, (**claim 59**).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husler 6,263,528 in view of Warner 6,295,676 or Sklar 4,429,427.**

Each of Warner or Sklar teach that it is well known to form mattresses of pocket springs as is shown by Figs. 2 and 3 of Warner and Figs. 1 and 4 of Sklar. Therefore, to have formed the Husler mattress with coil springs or pocket springs, thus providing a well known alternative spring support for a mattress, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Warner and Sklar.

**Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz 3,659,297 in view of Warner 6,295,676 or Sklar 4,429,427.**

Each of Warner or Sklar teach that it is well known to form mattresses of pocket springs as is shown by Figs. 2 and 3 of Warner and Figs. 1 and 4 of Sklar. Therefore, to have formed the Schutz mattress with coil springs or pocket springs, thus providing a well known alternative spring support for a mattress, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Warner and Sklar.

**Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rude 540,112 in view of Warner 6,295,676 or Sklar 4,429,427.**

Each of Warner or Sklar teach that it is well known to form mattresses of pocket springs as is shown by Figs. 2 and 3 of Warner and Figs. 1 and 4 of Sklar. Therefore, to have formed the Rude mattress with coil springs or pocket springs, thus providing a well known alternative spring support for a mattress, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Warner and Sklar.

#### ***Response to Arguments***

Applicant's arguments filed July 08, 2009 have been fully considered but they are not persuasive. With regard to Husler '528, Husler does indeed disclose pivot member 51 that would allow for pivoting along an axis parallel to the pivoting member whether 5 of Husler is utilized as a pivoting member or any other elongate member is inserted within member 51.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL SAFAVI whose telephone number is (571)272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/  
Primary Examiner, Art Unit 3637

M. Safavi  
October 07, 2009